

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

2011 DEC 14 AM 11:58
SAVANNAH, GA.

ROY EUGENE LIVINGSTON,

Petitioner,

v.

WARDEN MILDRED RIVERA,

Respondent.


CASE NO. CV411-169

O R D E R

Before the Court is the Magistrate Judge's Report and Recommendation (Doc. 5), to which objections have been filed (Doc. 8). After a careful de novo review of the record, the Court concludes that Petitioner's objections are without merit. A federal habeas corpus petition is time barred if filed more than one year following the date the state conviction became final, regardless of whether the law in that state allows greater than one year to file motions seeking post-conviction relief or other collateral review. See Tinker v. Moore, 255 F.3d 1331, 1333 (11th Cir. 2001); Webster v. Moore, 199 F.3d 1256, 1259 (11th Cir. 2000). In other words, it does not matter in this case that Petitioner's state habeas petition, filed within two years of his conviction becoming final, was timely under Florida law—Petitioner's failure to seek habeas

relief within one year of his conviction becoming final, coupled with the absence of any state proceedings tolling that period, renders him time-barred from now seeking federal habeas relief. Accordingly, the report and recommendation is **ADOPTED** as the Court's opinion in this case and Petitioner's 28 U.S.C. § 2254 Petition is **DENIED**. As noted in the report and recommendation, the Court declines to grant Petitioner a Certificate of Appealability, rendering moot any request for leave to appeal in forma pauperis. The Clerk of Court is **DIRECTED** to close this case.

SO ORDERED this 14th day of December 2011.



WILLIAM T. MOORE, JR.
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA